

February 23, 1994

This is in response to your correspondence of October 29, 1993, requesting an opinion on several questions regarding the recordkeeping provision contained in the Research and Special Programs Administration's drug testing regulations at 49 CFR Part 199, Section 199.23.

Your questions are centered around the following scenario as taken verbatim from your correspondence: "Suppose an operator (a gas public utility) with covered employees enters into an agreement to sell its assets in a given geographical area to another gas public utility, and the buyer agrees to hire the seller's employees in that area." Your questions and our response to each are outlined below:

QUESTION: May the seller provide to the buyer the records relating to the drug tests of the employees to be hired by the buyer, and all related Part 199 records concerning those employees?

ANSWER: Yes. The new gas utility operator should try and obtain all the necessary records relating to the Part 199 drug testing program. If not, the operator must ensure that all employees who will perform covered functions are subjected to a pre-employment test and have a negative test result before allowing them to perform any covered functions.

QUESTION: If so, when may the provision of records to the buyer occur?

ANSWER: For purposes of compliance with the drug testing regulations, an operator must have records demonstrating that an employee has passed a pre-employment test and is part of a random testing pool before the employee can perform a covered function for the buyer.

QUESTION: May the seller keep copies of those records in case any disputes or questions arise later concerning the seller's compliance with Part 199?

ANSWER: Under Part 199, the seller is not required to keep copies of the drug testing records.

QUESTION: Are there any precautions that must be taken in connection with the provisions of those records to the buyer?

ANSWER: The drug testing records for only the employees being hired by the buyer should be transferred from the seller. Records about previous employees and their test results should not be maintained by the buyer as they are not part of the current drug testing program. The affected employees should be advised that their drug testing records are being transferred from the seller

to the buyer. The employees should be briefed on the buyer's drug testing program and any difference between the seller's and the buyer's program to ensure they understand their responsibilities under the new drug testing program.

Thank you for your inquiry. Please let me know if you need additional information about our drug testing requirements.

Sincerely,

Richard L. Rippert
Drug and Alcohol Program Manager
Office of Pipeline Safety
Compliance